

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**JERRY SIMONE-WILSON,
Petitioner,**

v.

Case No. 13-C-1061

**MICHAEL BAENEN, Warden,
Green Bay Correctional Institution,
Respondent.**

ORDER

Jerry Simone-Wilson has filed a habeas petition under 28 U.S.C. § 2254. Pursuant to Rule 4 of the Rules Governing § 2254 Cases, I must give the case prompt initial consideration.

If it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Rule 4, Rules Governing § 2254 Cases. I have examined the petition and the attached exhibits and have determined that it does not plainly appear that the petitioner is not entitled to relief in the district court.

The petitioner has also filed a motion in which he requests that I employ the "stay and abeyance" procedure approved by the Supreme Court in Rhines v. Weber, 544 U.S. 269 (2005). The petitioner states that he wishes to return to state court and exhaust certain federal claims that he did not exhaust during his direct appeal and would prefer to have his other federal claims held in abeyance in the meantime. In light of this request,

I will not require the respondent to file an answer to the petition. Instead, I will require the respondent to indicate whether he opposes the petitioner's request for stay and abeyance. If he does, then he should explain the grounds for his opposition. The petitioner will then have fifteen days to file a reply brief in support of his request for stay and abeyance. If the respondent does not oppose the petitioner's request for stay and abeyance, then I will grant the request.

THEREFORE, IT IS ORDERED that, within 30 days of the date of this order, the respondent shall indicate whether he opposes the petitioner's request for stay and abeyance. If the respondent opposes the request, the petitioner may file a reply brief in support of his request for stay and abeyance within 15 days of the date on which the respondent files his brief in opposition. If the respondent does not oppose the request, I will grant it.

Pursuant to the Memorandum of Understanding between the Attorney General and this court, copies of the petition and this order are being sent today to the Attorney General for the State of Wisconsin for service upon the respondent.

Dated at Milwaukee, Wisconsin, this 25th day of September, 2013.

s/ Lynn Adelman

LYNN ADELMAN
District Judge